

OPINION
59-133

February 23, 1959 (OPINION)

INSANE, FEEBLEMINDED, ETC.

RE: Care of Blind - Blind School Funds - Pupils Sent Out of State

This is in reply to your inquiry as to whether moneys now received for the blind school would follow pupils if sent out of the state of North Dakota.

The moneys to which reference is made are, we assume, the earnings of the funds created by the grant contained in section 17 of the Enabling Act of this state in terms as follows in so far as here applicable:

That in lieu of the grant of land for purposes of internal improvement, made to new states by the eighth section of the Act of September 4, 1841, which Act is hereby repealed as to the states provided for by this Act, and in lieu of any claim or demand by the said states, or either of them, under the Act of September 28, 1850 and Section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this Act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the state of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for the state normal schools, eighty thousand acres; for public buildings at the capital of said state, fifty thousand acres; and for such other educational and charitable purposes as the Legislature of said state may determine, one hundred seventy thousand acres; in all five hundred thousand acres.

To the state of North Dakota a like quantity of land as is in this section granted to the State of South Dakota; and to be for like purposes, and in like proportion as far as practicable."

and also:

Section 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for 'other educational and charitable institutions,' as is allotted by law, viz:

Second: The school for the blind of North Dakota, at Bathgate,

in the county of Pembina, with a grant of thirty thousand acres."

. . . ."

The second subsection of said section 216 of the North Dakota Constitution as amended to date provides:

Section 216. Second: The blind asylum shall be known as the North Dakota School for the Blind and may be removed from the county of Pembina to such other location as may be determined by the board of administration to be in the best interests of the students of such institution and the state of North Dakota."

The language pertinent to the question is found in section 17 of the Enabling Act pertaining to the state of North Dakota and is as follows:

. . . . and for such other educational and charitable purposes as the Legislature of said state may determine, one hundred seventy thousand acres:"

From the entire text of the Enabling Act and other associated provisions the term in question should be construed to mean "and for such other institutions for educational and charitable purposes." It is thought that the lands given are given to education and charitable institutions or to institutions with educational or charitable purposes. I do not believe that the term "charitable purpose" as found in the Enabling Act and also as found in the constitutional provision relating to grant land can be construed that the income or proceeds from this land can be used for welfare or charitable purposes other than through an institution.

The language in question here is found in the second paragraph of section 17 of the Enabling Act. Preceding this language, it is noted that specific allotments were made to various schools; school of mines, reform school, deaf and dumb asylum, agricultural college, university, normal schools, etc. It is after these specific allotments of grants that we find the language ". . . . and for such other educational and charitable purposes as the Legislature of said state may determine, one hundred seventy thousand acres;"

This is an instance where the doctrine of *enusden generis* applies. This rule in substance is where general words follow the enumeration of particular classes of persons or things, the general words under the rule of construction will be construed as applicable only to persons or things of the same general nature or class as those enumerated, unless an intention to the contrary is clearly shown. In the particular instance we have the Enabling Act enumerating several things and all of which are institutions of one kind or another. *Corpus Juris Secundum*, Volume 82, page 662, section 332 states that this rule is frequently applied where the term "any others" or "other such" or "other such like" follows an enumeration of particular classes. In our particular phrase we find the enumeration of particular institutions followed by the term "and such other." This clearly indicates that the following language, "educational and

charitable purposes", means institutions of educational and charitable purposes and does not apply to merely any educational or charitable purpose of which there are many, in fact, far to many to begin to enumerate here.

In examining section 216 of the Constitution of North Dakota, we find the opening paragraph:

The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for 'other educational and charitable institutions' as is allotted by law, namely:" (Underscoring ours). It is noted that this refers to grants of land made by the United States for "other educational and charitable institutions." This lends weight to the theory that the language in question refers to "institutions" and not merely to "educational and charitable purposes." It is noted that section 216 was adopted pursuant to the Enabling Act. The language chosen by the Constitutional Convention is significant in so much that it indicated what the convention interpreted the phrase in question to mean. In other words, the Constitutional Convention interpreted the phrase in question to mean institutions and not just merely charitable and educational purposes, and consequently employed the language quoted out of section 216. It is also noted that section 216 refers to the grant made by the United States and particularly the language in quotes which seems to add greater significance.

It is also noted that in section 159 of the Constitution,

All land, money or other property donated, granted or received from the United States or any other source for a university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal school or other educational or charitable institution or purpose."

It is noted here that the phrase, "educational or charitable institution or purpose" lends support to the theory that the phrase in question refers to institutions and not merely educational and charitable purpose.

It is also noted with interest that under the Enabling Act where grants were made to other states that the grant was to specific schools or institutions. It would seem rather odd that in the same Enabling Act making grants to other states that the federal government should make an exception to South Dakota and North Dakota.

I would conclude that the following phrase: "And for such other educational and charitable purposes" refers to institutions for education and charitable purposes and not to any educational or charitable purpose.

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